



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

F. #2019R01460

*271 Cadman Plaza East
Brooklyn, New York 11201*

February 11, 2024

By ECF

The Honorable Eric N. Vitaliano
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Javier Aguilar
Criminal Docket No. 20-390 (ENV)

Dear Judge Vitaliano:

The government respectfully writes to address issues regarding the admissibility of certain government exhibits. Specifically, next week, the government intends to offer the email communications identified in Attachment A into evidence and to read several of those communications to the jury, either through an attorney or through a witness. The government understands that the defendant objects to the admissibility of many of these communications on hearsay and possibly other grounds.¹

The government is providing the referenced exhibits to the Court via an electronic file sharing site. Attachment A also provides a brief description of the exhibits and the basis for admissibility as to each.

¹ The government understands that the defendant does not dispute the authenticity of the referenced exhibits under Fed. R. Evid. 901.

The government is prepared to address the admissibility of these exhibits more fully before the Court should that aid the Court in its determination of their admissibility.

Respectfully submitted,

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Enclosures (Filed Under Seal)

cc: Counsel of Record (by e-mail)

ATTACHMENT A

GX #	Description	Basis for Admissibility
1003, 1003-T	2/13/2014 email from J. Aguilar to L. Bacigalupo	Fed. R. Ev. 801(d)(2)(A) (defendant's statement)
1009, 1009-T	3/26/2014 email from X. Rodriguez to J. Aguilar	Not offered for truth. Offered for: (1) attribution of "xr.upstream" email address to Xavier Rodriguez; (2) use of the nickname "Tocayo" (<u>i.e.</u> , namesake); and (3) establishing the relationship between Xavier Rodriguez and the defendant
1014-A	6/4/2015 email from J. Aguilar to Vitol travel department.	Fed. R. Ev. 801(d)(2)(A) (defendant's statement)
1072-A	8/18/2016 email from J. Aguilar to X. Rodriguez	Fed. R. Ev. 801(d)(2)(A) (defendant's statement)
1073, 1073-T	8/23/2016 email from "skisensation" to J. Aguilar	Fed. R. Ev. 801(d)(2)(E) (co-conspirator statement). Moreover, as here, "a statement offered to show its effect on the listener is not hearsay." <u>United States v. Dupree</u> , 706 F.3d 131, 136 (2d Cir. 2013).
1081-A	8/30/2016 email from J. Aguilar to himself.	Fed. R. Ev. 801(d)(2)(A) (defendant's statement)
1081-B	Attachment to 1801-A	(Same)
1084, 1084-A	9/6/2016 email from X. Rodriguez to J. Aguilar	Fed. R. Ev. 801(d)(2)(E) (co-conspirator statement)
1084-A	Attachment to 1084-A	(Same)
1186-A	1/26/2017 Email from M. Loya to J. Aguilar and others, including Vitol executive committee [Note: Emails written by the defendant are lower in the chain]	Fed. R. Ev. 801(d)(2)(A) (defendant's statement); top part email chain is "a statement offered to show its effect on the listener is not hearsay." <u>United States</u>

		<u>v. Dupree</u> , 706 F.3d 131, 136 (2d Cir. 2013).
1208-A	1/26/2017 email from J. Aguilar to R. Hardy and others, including Vitol executive committee	Fed. R. Ev. 801(d)(2)(A) (defendant's statement)
1403	4/17/18 email from "alopezmx" to J. Aguilar	Document does not contain any statements and is not being offered for the truth (but instead for fact of communication).
1403-A	Attachment to 1403	Fed. R. Ev. 801(d)(2)(E) (co-conspirator statement) (Hanst)
1403-B	Attachment to 1403	Fed. R. Ev. 801(d)(2)(E) (co-conspirator statement) (Hanst)
1409	5/2/18 email from "alopezmx" to J. Aguilar	This document is not offered for the truth of any statements, but for the fact of the communication (transmission of contracts); Moreover, a document "offered to show its effect on the listener [the defendant] is not hearsay." <u>United States v. Dupree</u> , 706 F.3d 131, 136 (2d Cir. 2013).
1409-A	Attachment to 1409	Fed. R. Ev. 801(d)(2)(E) (co-conspirator statement) (Hanst)
1409-B	Attachment to 1409	Fed. R. Ev. 801(d)(2)(E) (co-conspirator statement) (Hanst)
1427	5/18/2018 email from M. Ducrest to J. Aguilar and others	Fed. R. Ev. 801(d)(2)(E) (co-conspirator statement) (Ducrest); document is also intended to show its effect on the listener [the defendant] and is therefore not hearsay. <u>United States v. Dupree</u> , 706 F.3d 131, 136 (2d Cir. 2013). Moreover, the document is not being offered for the

		truth of the statements therein but instead to show, among other things, its falsity by omission (lack of mention of Vitol relationship with Lion Oil and Zanza Oil).
1445	6/6/2018 email from L. Hanst to E. Pere	Fed. R. Ev. 801(d)(2)(E) (co-conspirator statement) (Hanst, E. Pere)
1450, 1450-T	6/12/2018 email from J. Aguilar to M. Loya	Fed. R. Ev. 801(d)(2)(A) (defendant's statement)
1596	11/15/2019 email from "alopexmx" to J. Aguilar	Fed. R. Ev. 801(d)(2)(E) (co-conspirator statement). Moreover, the document is not being admitted for the truth of any statements but for the fact of the communication. Document is also intended to show its effect on the listener [the defendant] and is therefore not hearsay. <u>United States v. Dupree</u> , 706 F.3d 131, 136 (2d Cir. 2013).
1596-A	Attachment to 1596	Same as above.
1771-A	9/16/2016 email from J. Aguilar to C. Bake and M. Loya	Fed. R. Ev. 801(d)(2)(A) (defendant's statement)
1777	3/4/2019 email from J. Aguilar to J. Aguilar	Fed. R. Ev. 801(d)(2)(A) (defendant's statement)
1777-A	Attachment to 1777	(Same)
1806	5/8/2018 email from M. Ducrest to J. Aguilar and others	Fed. R. Ev. 803(3) (state of mind); Fed. R. Ev. 801(d)(2)(E) (co-conspirator statement) (Ducrest)